*****

In the High Court of Punjab & Haryana at Chandigarh.

Date of decision : 5.12.2006.

Surinder Singh and others .... Appellants.

vs

Malkiat Singh and others .....Respondents.

Coram Hon'ble Ms. Justice Kiran Anand Lall.

Present: Mr.Arun Bakshi,Advocate,for the appellants.

Kiran Anand Lall, J.

Both the courts below having non-suited the appellants, they have come up to this court, in second appeal. The suit filed by them, was for permanent injunction restraining the respondents and their agents, etc., from dispossessing them from the suit property, except in due course of law, and also from interfering with their possession over it.

The case of the appellants, as set up in the plaint, was that they are owners in possession of the property in dispute which is situated in the abadi deh/ Lal lakir of Village Sofi Pind. They got this property in exchange from respondent no.1, Malkiat Singh, in the year 1975. It is being used by them for storing cow-dung and waste material of the house. In the year 1963, their uncle (father's brother), Bishan Singh, executed a registered gift-deed dated 10.9.1963 in respect of the property, shown in green colour in the site plan, in their favour, and in the year 1975, they exchanged the gifted property with the property (i.e. Suit property) of respondent no.1 Malkiat Singh, which is shown in red colour in the site plan. The occasion for filing the suit arose as the respondents, with a view to carve out a passage in the

*****

suit property, threatened to dispossess them therefrom.

The respondents denied the claim of the appellants in entirety, and pleaded that the property in dispute, which bears khasra no.78, is owned and possessed by respondent no.1. The Gram Panchayat had filed a petition against respondent no.1, under Section 42 of the Consolidation of Holdings Act, for providing a passage from his land to the main road, from the village. The Additional Director, Consolidation, decided the matter, providing a passage to the main road from the village, through his land comprised in khasra no.71. The matter went upto the Supreme Court, which remitted it back to the consolidation officer who, vide his order dated 20.5.1996, provided a passage through khasra no.70 of respondent no.1, shown in red colour in the site plan. Mutation was also sanctioned regarding this passage. The Gram Panchayat, thereafter, started making it a pacca passage. But, the appellants started interfering in the construction work, and later filed this suit.

Parties went to the trial on the following issues:-

1. Whether the plaintiff is entitled for the permanent injunction as prayed for? OPP
2. Whether the plaintiff has got no locus standi to file the present suit? OPD
3. Whether the plaintiff has concealed the material facts from the court? OPD
4. Whether the present suit is bad for non-joinder of necessary parties? OPD
5. Relief.

Since the trial court as well as the first appellate court recorded a concurrent verdict against the appellants, regarding their claim of ownership and possession over the suit property, the regular second appeal

*****

filed by them could be entertained only if they could show that any substantial question of law (s) was involved in it. During the course of hearing, the learned counsel representing them, could not, however, point out any such question.

The courts below rightly observed that the testimony of Surinder Singh appellant himself, reveals that the disputed property bears a khasra number, but no revenue record indicating that the same is owned or even possessed by the appellants, was produced in evidence. The documentary evidence led by respondent no.1, on the other hand, revealed that the disputed site had been carved out as a passage, from the land of respondent no.1, under the orders of the consolidation officer and, when the Gram Panchayat started brick-lining this passage, the appellants filed a frivolous suit. It was further found that no evidence regarding the alleged exchange of lands between the appellants and respondent no.1, was produced.

Since the appellants failed to produce any evidence indicating their ownership or even possession over the suit property, the courts below had rightly dismissed the suit. The appeal shall, accordingly, stand dismissed, in limine.

5.12.2006. (Kiran Anand Lall)
vs. Judge.